ssm

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3985 OF 2007
IN
FIRST APPEAL NO. 2184 OF 2007

Nahalchand Laloochand Pvt. Ltd. ...Applicant.

Vs.

Bheem Co-operative Housing Soc. Ltd. ...Respondents.

Smt. Rajani Iyyer, Sr. Counsel with Mr. V.R.Dhond i/by M/s. Prakash & Co. for the applicant.

Mr. G.N. Salunkhe and Mr. S.R. Sharma for the respondents.

CIVIL APPLICATION NO. 3986 OF 2007
IN
FIRST APPEAL NO. 2185 OF 2007

Nahalchand Laloochand Pvt. Ltd. ...Applicant.

Vs.

Sahadev Co-Operative Housing Soc. Ltd. ...Respondents.

Smt. Rajani Iyyer, Sr. Counsel with Mr. V.R.Dhond i/by M/s. Prakash & Co. for the applicant.

Mr. G.N. Salunkhe and Mr. S.R. Sharma for the respondents.

CIVIL APPLICATION NO. 3987 OF 2007
IN
FIRST APPEAL NO. 2182 OF 2007

Nahalchand Laloochand Pvt. Ltd. ...Applicant.

Vs.

Panchali Co-Operative Housing Soc. Ltd. ...Respondents.

Smt. Rajani Iyyer, Sr. Counsel with Mr. V.R.Dhond i/by M/s. Prakash & Co. for the applicant.

Mr. G.N. Salunkhe and Mr. S.R. Sharma for the respondents.

CIVIL APPLICATION NO. 3988 OF 2007
IN
FIRST APPEAL NO. 2181 OF 2007

Nahalchand Laloochand Pvt. Ltd. ...Applicant.

Vs.

Yudhishtra Co-Operative Housing Soc. Ltd. ...Respondents.

Smt. Rajani Iyyer, Sr. Counsel with Mr. V.R.Dhond i/by M/s. Prakash & Co. for the applicant.

Mr. Umesh Shetty with Miss. Yamini Chandran for respondent No.1.

CIVIL APPLICATION NO. 3989 OF 2007
IN
FIRST APPEAL NO. 2183 OF 2007

Nahalchand Laloochand Pvt. Ltd. ...Applicant.

Vs.

Arjun Co-Operative Housing Soc. Ltd. ...Respondents.

Smt. Rajani Iyyer, Sr. Counsel with Mr. V.R.Dhond i/by M/s. Prakash & Co. for the applicant.

CORAM : ANOOP V. MOHTA,J.

DATED : 13th September, 2007

P.C.

1. By impugned order dated 04/04/2007 passed by the City Civil Judge, Greater Bombay, the suits filed by the plaintiffs, are dismissed.

2. The order of injunction dated 18/12/2004 passed in Notice of Motion No. 1379 of 2004 stood vacated. However, from time to time pursuant to the respective submissions made by the parties, the interim orders so granted has been continued till this date initially by the trial court and since 14/08/2007 by this Court pending the admission. The basic prayer clause (a) of notice of motion 1376 of 2004 is as follows:-

> "a) that pending the hearing and final disposal of this suit, the Defendants, their office bearers, committee members, members, servants, agents or any other person claiming through them be restrained by an order of injunction of this Hon'ble Court from encroaching upon/trespassing on the suit premises and/or in any manner disturbing/obstructing/interfering with the possession of the Plaintiffs in respect of the suit premises i.e. 25 number of parking spaces in the stilt portion of the building by name Panchali, as more particularly shown in the plan annexed as Exhibit "A" to the plaint situated at Indraprastha Enclave, N.L.Complex, Anand Nagar, Dahisar (East), Mumbai-400 068.

3. In the result, the interim order so granted has been in force since then.

4. On 4th September, 2007, this Court has admitted the appeal and expedited the same with direction to the appellant to file private paper book.

5. On request for interim order, the matters are listed today. The learned counsel appearing for the respondent while opposing the present interim order basically contended that in view of the dismissal of the suit, the balance of convenience lies in their favour. There would be irreparable loss if the interim orders so granted, continue, in fact, causing injustice and hardship to the respective members of the society. They further submit that to keep such premises parking space/stilt, locked or sealed like this, would have of no use.

6. However, after considering the rival contentions as raised by the parties and considering the fact that the interim order has been in force since April, 2004 and remained intact till this date, I am of the view that there is no reason to vacate the said stay/ injunction till the decision of the first appeal. The points as raised in the first appeal deals with the general important aspects, including the plaintiffs or

such person right to sell or dispose of the space under the stilt. Further, whether the provisions of MOFA restrict rights of the promotors to sell or dispose of the parking space; and whether the development control rules restrict the rights to dispose of the parking spaces. Apart from this on merit also the reasoning as given in view of the grounds raised in the memo of appeal need detail hearing. Therefore, unless this points are re-heard as rightly contended by the Senior Counsel appearing for the appellants, I am of the view that to avoid further complications, in the matter and basically in respect of the respective premises in question, the interim order as granted by this Court on 28/08/2007 shall continue pending the disposal of the present first appeals.

7. However, it is made clear that the Authorities under the respective laws are free to take action as contemplated in case of any breaches of provisions of the laws or conditions.

8. The submission of the learned counsel appearing for the parties that in the interest of justice, the matter be listed for final hearing expeditiously is

accepted. As already granted, to file paper book subject to same, appeal be listed for final hearing after six weeks H.O.B..

9. Interim order as granted by this Court, however, shall continue for 9 weeks.

10. It is further made clear that the appellants shall not crate any third party right and interest in the said premises.

11. In view of this, all the applications are disposed of, accordingly.

(ANOOP V. MOHTA, J.)